

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

February 18, 2004

PROCEDURAL ORDER

MAINE PUBLIC UTILITIES COMMISSION
Investigation of Bangor Hydro-Electric
Company's Stranded Cost Revenue
Requirement

Docket No. 2001-239

BANGOR HYDRO-ELECTRIC COMPANY
Request for an Accounting Order
(PERC Settlement Agreement)

Docket No. 2004-5

On January 8, 2004, Bangor Hydro-Electric Company (BHE) filed a petition that requested that the Commission (1) find that the Settlement Agreement between BHE and Penobscot Energy Recovery Company (PERC) dated Dec. 30, 2003 constitutes a reasonable effort by BHE to mitigate its stranded costs and; (2) enter an accounting order that the net proceeds received by BHE under the Settlement Agreement be deferred for recognition in BHE's next stranded cost rate proceeding.

BHE and PERC are parties to a Power Purchase Agreement (PPA) dated June 21, 1984 under which BHE is obligated to purchase all of the electric energy and capacity produced by a Qualifying Facility owned by PERC. The initial date of delivery occurred in February 1988 when PERC began making power deliveries to BHE pursuant to the PPA.

As defined in the PPA, the purchase price contains a variable component, or a component that is subject to adjustment on April 1 of each year during the term of the PPA. BHE states that, however, during each year prior to 2003, BHE adjusted the variable component of the PPA on January 1 instead of April 1 due to a mistake on BHE's part. BHE estimates that its mistake resulted in an overpayment by BHE to PERC of \$1,287,127 thru Dec. 31, 2002. Beginning in 2003, BHE calculated the variable component adjustment for effect on April 1.

In early 2003, BHE sought recovery of its overpayment due to the erroneous calculation of the variable component. BHE states that PERC denied any liability for the overpayment, and claimed that BHE had underpaid PERC by approximately \$10 million because BHE began to escalate the variable component in 1988, when power deliveries began, rather than in 1985, the year following the execution of the PPA. BHE denies any liability for PERC's claim.

BHE and PERC executed the Settlement Agreement to settle these claims under which PERC, in equal monthly payments over two years, will reimburse BHE \$475,000

to fully satisfy BHE's claim against PERC for reimbursement of the variable component overpayment. By the Settlement Agreement, PERC also will release BHE from any liability to PERC for failure to begin escalation of the variable component in 1985. The Settlement Agreement is conditioned upon a finding by the Commission that the Settlement Agreement reflects a reasonable effort by BHE to mitigate stranded costs.

BHE states that it believes the Settlement Agreement is in the best interests of BHE's customers and should directly benefit its customers. To ensure that customers receive the benefits, BHE requests the Commission to issue an accounting order to defer the net revenue BHE will receive under the Settlement Agreement. (BHE states that net revenue means that its litigation expenses and the reduction in BHE's profit sharing payments from PERC should be offset against the revenue received from the Settlement Agreement.)

BHE filed its request in Docket No. 2001-239, the most recent investigation into the Company's stranded costs. The Commission concurs that it is appropriate to process BHE's request as a continuation of BHE's most recent stranded cost proceeding. See *Central Maine Power Company, Procedural Order*, Docket No. 2002-770 (Phase II) (August 12, 2003) (Settlement of dispute between CMP and FPL over terms of sale of Wyman 4 generating station processed as Phase II of the most recent CMP stranded cost proceeding). Rather than docket BHE's request as a Phase II to Docket No. 2001-239, for administration convenience we will assign a new 2004 docket number to BHE's Jan. 8 request (No. 2004-5) and double docket each order or notice with No. 2001-239. All matters that are filed relating to BHE's January 8 request will be kept in the file labeled No. 2004-5. As we are treating the Jan. 8 request like a Phase II or continuation of Docket No. 2001-239, all parties to that docket are automatically parties to Docket No. 2004-5. The service list for Docket No. 2004-5 will be the service list already established for Docket No. 2001-239.

A case conference/technical conference will be held at the Commission on **Thursday, February 26, 2004 at 1:30 p.m.** The purpose of the conference will be to discuss the orderly processing of BHE's request and to ask BHE questions about the settlement, including any follow-up questions to responses to a data request that will be filed today by the Examiner.

Dated at Augusta, Maine, this 18th day of February, 2004.

BY ORDER OF THE HEARING EXAMINER

James A. Buckley